

RICHARD M. MCGILL

ATTORNEY AT LAW

5303 WEST COURT DRIVE

P.O. BOX 358

UPPER MARLBORO, MD 20773

(301) 627-5222

ASSOCIATE
BENJAMIN J. WOOLERY

August 1, 1991

Sid Friedman, President
Five Star Broadcasting, Inc.
42 Marlow Road
Wayne, New Jersey 07470

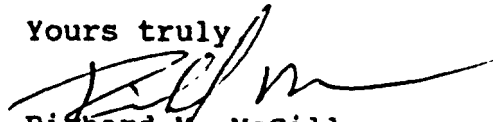
Dear Mr. Friedman:

Thank you for your telephone calls over the last two weeks responding to my letter of July 10, 1991. I have related the substance of our conversations to Bob Purcell and since no specific proposal was forthcoming from you and your partnership with respect to payment, I have been instructed to pursue this matter through the Courts. Consequently I want to put you on notice at the earliest opportunity that I will be filing a breach of contract complaint against the corporation and seeking other appropriate relief. Therefore, you should seriously consider retaining counsel to respond to the proposed lawsuit.

You indicated in one of our telephone conversations that you did not consider Mr. Purcell's letter of April 5, 1991 operative any more as to declaring the loan in default since a payment was made subsequent to said letter. Therefore, on behalf of Mr. Purcell I am declaring the Promissory Note of March 1987 in default and requesting payment within the next thirty (30) days of the current principal and interest now due and owing.

Thanking you for your attention to this matter, I am

Yours truly




Richard M. McGill

RMM:ko
cc: Mr. Robert Purcell

D E C L A R A T I O N

I, Robert L. Purcell, do hereby declare under penalty of perjury, that I have read the foregoing Petition to Deny, and that the facts stated therein are true and correct.

Dated this 25th day of October, 1991.



Robert L. Purcell

CERTIFICATE OF SERVICE

I, Jeanne E. Butler, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing "**Petition to Deny**" were sent this 28th day of October, 1991 via first class mail, postage prepaid to the following:

Neal J. Friedman, Esquire
Pepper & Corazzini
1776 K Street, N. W.
Suite 200
Washington, D. C. 20006

Larry D. Eads*
Mass Media Bureau
Federal Communications Commission
1919 M Street, N. W., Room 302
Washington, D. C. 20554

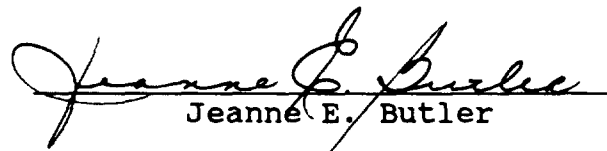

Jeanne E. Butler

EXHIBIT 2

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.

ATTORNEYS AT LAW

5335 WISCONSIN AVENUE, N.W., SUITE 300
WASHINGTON, D.C. 20015-2003

(202) 686-3200

B. JAY BARAFF
ROBERT L. OLENDER
JAMES A. KOERNER
PHILIP E. HOCHBERG
AARON P. SHAINIS
LEE J. PELTZMAN
MARK J. PALCHICK
ALAN E. ARONOWITZ

October 28, 1991

OF COUNSEL
ROBERT BENNETT LUBIC

FAX: (202) 686-8282

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

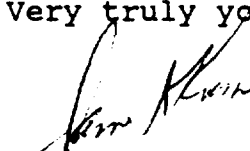
Re: File No. BALH-910823HO

Dear Ms. Searcy:

On behalf of Robert L. Purcell, there are transmitted herewith an original and four (4) copies of a **P**etition to **D**eny the above-referenced application seeking consent to assignment of the license of Radio Station WWOC-FM, Avalon, New Jersey from Group Six Communications, Inc. to Ocean Media, Inc.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner
Counsel for
ROBERT L. PURCELL

Enclosures

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)
)
GROUP SIX COMMUNICATIONS, INC.,)
Assignor)
)
and)
)
OCEAN MEDIA, INC.,)
Assignee)
)
For Assignment of License of)
Station WWOC-FM, Avalon, NJ)

File No. BALH-910723HO

TO: Chief, Mass Media Bureau

PETITION TO DENY

Robert L. Purcell ("Purcell"), by his attorneys, hereby respectfully requests that the above-captioned application be denied or, at a minimum, designated for hearing on issues to determine the qualifications of the Assignee, Ocean Media, Inc., and its principals. In support hereof, the following is shown:

Purcell was the licensee of Radio Station WDMV(AM), Pocomoke City, Maryland. On May 29, 1987, pursuant to FCC consent, the station was sold to Five Star Broadcasting, Inc., the owners of which include Sid and Judi Friedman, Frank and Joan Field, and Tony Guida, who, together, own 50% of Ocean Media, Inc., proposed Assignee of WWOC. Five Star Broadcasting, and its principals, defaulted in payments to Purcell pursuant to a Promissory Note given in connection with the sale, and legal action has been

initiated in the Circuit Court for Montgomery County, Maryland. Purcell claims standing as a party aggrieved in light of the default by Five Star Broadcasting and its principals. Further, Purcell claims standing as a private attorney general with the right -- and perhaps the obligation -- to bring to the Commission's attention facts concerning the basic licensee qualifications of Ocean Media, Inc. and its principals.

Attachment 1 hereto is a copy of the Complaint filed September 20, 1991 in the Circuit Court for Montgomery County, Maryland. Attached to it is a copy of the Promissory Note executed by Five Star Broadcasting in connection with its purchase of the Pocomoke City station. The Complaint also sets forth salient facts concerning the default and failure to cure. Principals of Five Star Broadcasting has repeatedly told Purcell that they simply cannot afford to make payments to him.

In the captioned application, the proposed Assignee responded in the affirmative to the question which seeks to determine whether sufficient liquid assets are on hand or are available from committed sources to consummate the transaction and operate the facilities for three months. The agreement contained within the application indicates that consummation of the transaction will require payment at closing in the total amount of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000.00), ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) of which is apparently in escrow.

The affirmative response to the question in Section III is, quite clearly, at odds with the inability to make payments to

Purcell, and the oft-repeated statements of principals that they are unable to afford to make such payments.

Although the Commission has not made it a practice to inquire into financial qualifications of assignees to the same degree that it does of applicants for new Construction Permits, the assignment application does contain questions similarly worded to those in FCC Form 301. An assignee's response to such questions must be no less truthful than a Construction Permit applicant's response. Since the Commission must be able to rely upon information submitted by those coming before it, truthfulness and candor are always in issue. RKO General, Inc., v. FCC, 670 F.2d 215 (D.C. Cir. 1981), cert. den. 456 U.S. 927 (1982). In this case, there is an apparent and obvious question with respect to the candor of the response.

It is well settled that the Commission need not be shown the existence of a fire before designating a hearing. The existence of a great deal of smoke is sufficient.

Accordingly, it is respectfully requested that the above-captioned application be denied or designated for hearing to determine the basic qualifications of the proposed Assignee.

Respectfully submitted,

ROBERT L. PURCELL

By: 

James A. Koerner
His Attorney

BARAFF, KOERNER, OLENDER
& HOCHBERG, P. C.
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015-2003

(202) 686-3200

October 28, 1991

PETITION TO DENY\PURCELL\16210.02

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND
STATE OF MARYLAND, MONTGOMERY COUNTY TO WIT:

WRIT OF SUMMONS

ATTACHMENT 1

TO:

Case Number 81-1234
Case Type CIVIL

NAME: FIVE STAR BROADCASTING INC.
ADDRESS: DEER SWAMP ROAD POTOMAC CITY MD 21151
PERSON SERVED: ANDREW DEOD, RESIDENT AGENT

YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY
PLEADING OR MOTION IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY
PERCELL ROBERT L
WITHIN 10 DAYS AFTER SERVICE OF THIS SUMMONS UPON YOU.

WITNESS, THE HONORABLE CHIEF JUDGE OF THE SIXTH JUDICIAL CIRCUIT
OF MARYLAND.

TO THE PERSON SUMMONED:

1. Personal attendance in the court on the day named is
NOT required.
2. Failure to file a response within the time allowed may
result in a judgment by default or the granting of the
relief sought against you.



Bettie A. Skelton

BETTIE A. SKELTON, CLERK
of the Circuit Court for
Montgomery County, Maryland
50 Courthouse Square
Rockville, MD 20850-2393

DATE ISSUED: 08/20/91

SHERIFF'S RETURN

SHERIFF

NOTE:

1. This summons is effective for service only if served within
60 days after the date it is issued.
2. Proof of service shall set out the name of the person served,
date and the particular place and manner of service, if
service is not made, please state the reason(s).
3. Return of served or unserved process shall be made promptly and
in accordance with Rule 2-126.
4. If this summons is served by private process, process server
shall file a separate affidavit as required by Rule 2-126 (a).

ENC2

3. That all payments required under the Promissory Note in question were to be paid to Plaintiff Purcell at 10501 Carrollton Road, Rockville, Montgomery County, Maryland 20853.

4. That on or about the 29th day of May 1987, the Defendant, Five Star Broadcasting, executed a Promissory Note in favor of Purcell. A true copy of said Promissory Note is attached hereto as Exhibit "A" and is incorporated herein by reference as if repeated full verbatim.

5. Pursuant to the terms of said Promissory Note, the Defendant, Five Star Broadcasting, is obligated to repay the principal amount of \$350,000.00 together with interest at the rate of 8% on or before the first day of June 2007.

6. That said Promissory Note provides in part, under the paragraph ACCELERATION, that

"an event of default shall occur if any of the following events shall happen:

(a) A default by the Maker in the payment of any installment of the principal of and interest on this Note when it becomes due and payable and such default continues for more than thirty (30) days after the President of Maker has received, at the then-current address of said Maker, written notice specifying such default and requiring it to be remedied; . . . "

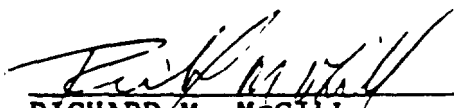
7. That said Promissory Note is in default as no payment has been made by Defendant Five Star Broadcasting since April 1991.

8. That despite due demand, the Defendant, Five Star Broadcasting, has failed and refused and continues to fail and refuse to pay the indebtedness under the terms of the said Promissory Note.

9. That counsel for the Plaintiff notified the President of the Maker of the Note, Five Star Broadcasting, Inc., in letters of July 10, 1991 and August 1, 1991, that the Note was in default and requested that the default be remedied within thirty (30) days of said letters. Both letters are attached hereto as Exhibit "B", and are incorporated herein by reference.

10. As of the first day of September, 1991, there was due and owing under the said Promissory Note, the sum of \$334,632.45, principal plus interest, with interest continuing to accrue at the rate of \$71.04 per diem, from September 2, 1991, until paid in full.

WHEREFORE, the Plaintiff, Robert L. Purcell, prays that judgment be entered against the Defendant, Five Star Broadcasting, Inc., in the amount of \$334,632.45, together with interest at the rate of \$71.04 per diem from September 2, 1991, until all amounts are paid in full.


RICHARD M. MCGILL
ATTORNEY FOR PLAINTIFF
14713 Main Street
P.O. Box 358
Upper Marlboro, Maryland 20773
(301) 627-5222

PROMISSORY NOTE

\$350,000.000

Date:

FOR VALUE RECEIVED, Five Star Broadcasting, Inc. (herein called "Maker") hereby promises to pay to the order of Robert L. Purcell the principal sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) with interest at the rate of 8% per annum on the unpaid balance thereof as hereinafter stipulated. On the 30th day after date hereof a payment of principal and interest of Two Thousand Nine Hundred Twenty-Seven Dollars and Ninety-Three Cents (\$2,927.93) shall be payable, and like monthly payments of Two Thousand Nine Hundred Twenty-Seven Dollars and Ninety-Three Cents (\$2,927.93) thereafter for a total of two hundred forty (240) monthly payments.

ORIGIN OF NOTE

This note is delivered by Maker pursuant to a Purchase Agreement, dated March , 1987, between Robert L. Purcell (SELLER) and Maker (BUYER) for the sale/purchase of those certain assets of Standard Broadcast Station WDMV, Pocomoke City, Maryland.

OPTIONAL PREPAYMENT OF PRINCIPAL

The Maker may at any time, without the written consent of the Payee, prepay all or any part of the unpaid principal sum hereof.

PLACE OF PAYMENT

Payment of the principal sum shall be made in lawful money of the United States of America at 15010 Carrolton Road, Rockville, Maryland 20853, or at such other place as the Payee may indicate to Maker.

SECURITY

Payment of the principal of this Note is secured by security instruments on the real and personal property of Station WDMV, Pocomoke City, Maryland, and an escrow of the capital stock of Maker as of the date hereof for a period of three (3) years.

ACCELERATION

An event of default shall occur if any of the following event(s) shall happen:

- (a) A default by the Maker in the payment of any installment of the principal of and interest on this Note when it becomes due and payable and such default continues for more than 30 days after the President of the Maker has received, at the then-current address of said Maker, written notice specifying such default and requiring it to be remedied;
- (b) The sale by Maker of all or substantially all of the assets of Standard Broadcast Station WDMV, Pocomoke

City, Maryland which sale is consummated prior to the due date for payment under the Note;

(c) The involvement of Maker or its assigns, in financial difficulties as evidenced by:

- (i) filing a petition in bankruptcy or for adoption of an arrangement under the Bankruptcy Act, as now or in the future amended, or filing an answer or admission asking such relief; or
- (ii) making a general assignment for the benefit of creditors; or
- (iii) consenting to the appointment of a trustee or receiver for all or a major portion of their property; or
- (iv) being adjudicated a bankrupt; or
- (v) the entry of a court order appointing a receiver or trustee for all or a major part of their property, or approving a petition filed against them under the Bankruptcy Act, as now or in the future amended (in both cases, without their consent), which order shall not be vacated, denied, set aside or stayed within 60 days from the date of entry;

Then, and in any such event, the holder hereof may at his option, by written notice to Maker, declare the entire principal amount hereof to be immediately due and payable without presentment, demand, protest, notice of protest or other notice of any kind, all of which are expressly waived by Maker.

City, Maryland which sale is consummated prior to the due date for payment under the Note;

(c) The involvement of Maker or its assigns, in financial difficulties as evidenced by:

- (i) filing a petition in bankruptcy or for adoption of an arrangement under the Bankruptcy Act, as now or in the future amended, or filing an answer or admission asking such relief; or
- (ii) making a general assignment for the benefit of creditors; or
- (iii) consenting to the appointment of a trustee or receiver for all or a major portion of their property; or
- (iv) being adjudicated a bankrupt; or
- (v) the entry of a court order appointing a receiver or trustee for all or a major part of their property, or approving a petition filed against them under the Bankruptcy Act, as now or in the future amended (in both cases, without their consent), which order shall not be vacated, denied, set aside or stayed within 60 days from the date of entry;

Then, and in any such event, the holder hereof may at his option, by written notice to Maker, declare the entire principal amount hereof to be immediately due and payable without presentment, demand, protest, notice of protest or other notice of any kind, all of which are expressly waived by Maker.

MAKER

ATTEST:

Five Star Broadcasting, Inc.

_____, Secretary

By

Sid Friedman, President

RICHARD M. MCGILL

ATTORNEY AT LAW

14713 MAIN STREET

P.O. BOX 219

UPPER MARIBORO, MD 20772

(301) 827-5222

ASSOCIATE

BENJAMIN J. WOOLERY

July 10, 1991

Sid Friedman, President
Five Star Broadcasting, Inc.
42 Marlow Road
Wayne, New Jersey 07470

Dear Mr. Friedman:

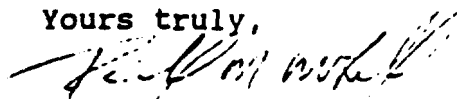
Please be advised I have been retained by Robert L. Purcell with regard to the collection of funds of a Promissory Note in the amount of \$350,000.00 dated March 1987.

You were previously notified by Mr. Purcell on April 3, 1991 that the Note was in default. I further understand that since said letter to you no further payment has been made. Since default has occurred, Mr. Purcell has elected to accelerate payment of the Note pursuant to the terms of said Note and therefore declares that the entire principal amount due and owing as of this date is immediately payable. I am sure you are familiar with the amortization schedule regarding this Note and said schedule indicates that as of February 1, 1991, the last date you were current, the balance due was \$319,712.58. At 8% interest per annum, the monthly interest is \$2,131.41. Consequently, I calculate that as of July 1, 1991, the principal balance due is \$330,369.63. On behalf of Mr. Purcell, I demand immediate payment.

Should this balance not be paid on or before July 25, 1991, I will file for appropriate legal relief in the Maryland State Courts.

Trusting I will hear from you within the next 15 days, I am

Yours truly,



Richard M. McGill

RMM:ko

cc: Mr. Robert Purcell

RICHARD M. MCGILL

ATTORNEY AT LAW

5303 WEST COURT DRIVE

P.O. BOX 358

UPPER MARLBORO, MD 20773

(301) 627-5222

ASSOCIATE

BENJAMIN J. WOOLERY

August 1, 1991

Sid Friedman, President
Five Star Broadcasting, Inc.
42 Marlow Road
Wayne, New Jersey 07470

Dear Mr. Friedman:

Thank you for your telephone calls over the last two weeks responding to my letter of July 10, 1991. I have related the substance of our conversations to Bob Purcell and since no specific proposal was forthcoming from you and your partnership with respect to payment, I have been instructed to pursue this matter through the Courts. Consequently I want to put you on notice at the earliest opportunity that I will be filing a breach of contract complaint against the corporation and seeking other appropriate relief. Therefore, you should seriously consider retaining counsel to respond to the proposed lawsuit.

You indicated in one of our telephone conversations that you did not consider Mr. Purcell's letter of April 5, 1991 operative any more as to declaring the loan in default since a payment was made subsequent to said letter. Therefore, on behalf of Mr. Purcell I am declaring the Promissory Note of March 1987 in default and requesting payment within the next thirty (30) days of the current principal and interest now due and owing.

Thanking you for your attention to this matter, I am

Yours truly


Richard M. McGill

RMM:ko
cc: Mr. Robert Purcell

D E C L A R A T I O N

I, Robert L. Purcell, do hereby declare under penalty of perjury, that I have read the foregoing Petition to Deny, and that the facts stated therein are true and correct.

Dated this 25th day of October, 1991.

Robert L. Purcell

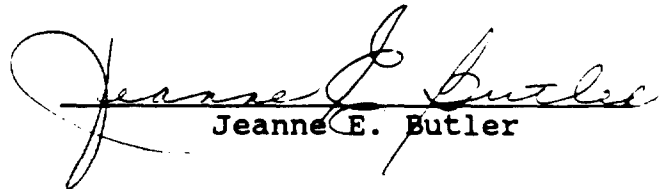
CERTIFICATE OF SERVICE

I, Jeanne E. Butler, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing "PETITION TO DENY" were sent this 28th day of October, 1991 via first class mail, postage prepaid to the following:

Barry Skidelsky, Esquire
Law Offices of Barry Skidelsky
157 Third Avenue, 26th Floor
New York, New York 10017

James J. Freeman, Esquire
Reed, Smith, Shaw & McClay
1200 18th Street, N. W.
Washington, D. C. 20036

Larry D. Eads*
Mass Media Bureau
Federal Communications Commission
1919 M Street, N. W., Room 302
Washington, D. C. 20554


Jeanne E. Butler

*Hand Delivery

EXHIBIT 3

PEPPER & CORAZZINI

VINCENT E. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
WILLIAM J. FRANKLIN
JOHN F. GARZIGLIA
TODD J. PARRIOTT
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI ■
■ NOT ADMITTED IN D.C.

ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006
—
(202) 296-0600

ROBERT LEWIS THOMPSON
E. THEODORE MALLYCK
OF COUNSEL
—
FREDERICK W. FORD
1909-1986
—
TELECOPIER: (202) 296-5572

November 13, 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

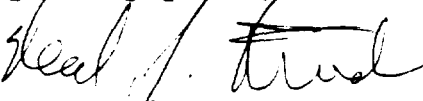
Re: **New FM Station, Ocean City, MD**
(File No. BPH-901224MF)
Webb Broadcasting, Inc.

Dear Ms. Searcy:

Transmitted herewith on behalf of Webb Broadcasting, Inc., applicant in the above-referenced proceeding, are an original and four (4) copies of its Motion to Dismiss. Kindly direct this information to the Chief of the Mass Media Bureau.

Should any questions arise concerning this matter please communicate directly with the undersigned.

Very truly yours,


Neal J. Friedman

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of)
)
WEBB BROADCASTING, INC.)
) File No. BPH-901224MF
For Construction Permit for)
New FM Broadcast Station on)
Channel 295A at Ocean City, MD)

To: Chief, Mass Media Bureau

MOTION TO DISMISS

Webb Broadcasting, Inc. ("Webb"), by its attorney and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended and Section 73.3584 of the Rules of the Commission, hereby moves to dismiss the Petition to Deny filed by Robert L. Purcell on October 28, 1991 as patently defective.^{1/} Webb is an applicant for a new FM station at Ocean City, Maryland. Purcell's wholly frivolous pleading is an abuse of the Commission's processes filed for the sole purpose of harassing certain of Webb's principals who are also principals of an unrelated entity against whom Purcell is attempting to enforce an alleged debt in the courts of the State of Maryland.^{2/} In support thereof the following is shown.

1. Section 309(d)(1) of the Act provides that a Petition to Deny must: (1) be filed by a party in interest; (2) be filed within the time period established in the Act or by the Commission; (3)

^{1/} Out of an abundance of caution, Webb is also filing its Opposition based on the substantive issues raised in the Petition.

^{2/} Webb, together with Ocean Media, Inc., also the target of a Petition to Deny Purcell has filed, Five Star Broadcasting, Inc., licensee of WDVM(AM), Ocean City, Maryland, and Group Six, Inc., licensee of WWOC(FM), Avalon, New Jersey, are separately asking the Commission to impose sanctions pursuant to Section 1.80 of the Rules of the Commission.

contain specific allegations that the petitioner is a party in interest and that grant of the application would be prima facie inconsistent with the public interest, convenience and necessity; and, (4) be supported by the affidavit of a person or persons with personal knowledge thereof or documents of which official notice can be taken. As will be shown below, Purcell fails to meet even a single one of these basic criteria.

2. Purcell has failed to demonstrate that he is a party in interest. He has made no showing that he is a resident of the service area of the proposed Ocean City station. See Citizens Communications Center v. FCC, 359 F.2d 994 (D.C. Cir. 1966) and Effingham Broadcasting Co., Inc., 51 FCC 2d 453 (1975). Purcell's claimed economic injury (the alleged failure of Five Star Broadcasting, Inc., a corporation wholly unrelated to Webb, to make timely payments on a promissory note) is not sufficient to give him standing. See FCC v. Sanders Brothers Radio Station, 309 U.S. 470 (1939).

3. Purcell's Petition is far too late. Webb's application was announced as having been accepted for filing in Report NA-143 on March 11, 1991, which established an April 12, 1991 deadline for petitions to deny. Section 73.3584 of the Rules requires that petitions to deny must be filed by the date specified. Purcell failed to do so. The rule further states that extensions of time in which to file petitions to deny will only be granted unless the applicant consents or there is a "compelling showing" that unusual circumstances prevented the timely filing. Purcell has neither requested nor obtained Webb's consent to the late filing, nor has he